ORIGINAL

Supreme Court, U.S.
FILED
APR 17 1997
CLERK

NO. 96-7901

IN THE
SUPREME COURT OF THE UNITED STATES

RESPONSE REQUESTED

RICHARD F. TREST,
Petitioner

VERSUS

UNITED STATES OF AMERICA
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

ANSWER BY STATE OF LOUISIANA OPPOSING PETITION FOR A WRIT OF CERTIORARI

JAMES M. BULLERS
LOUISIANA BAR ROLL #3643
DISTRICT ATTORNEY
26TH JUDICIAL DISTRICT
P.O. BOX 69
BENTON, LA 71006
Telephone: (318) 965-2332
Facsimile: (318) 965-2233

Attorney for State of Louisiana

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
STATEMENT OF CASE	1
ARGUMENT, DEFENSE ISSUE NO. 1	2
ARGUMENT, DEFENSE ISSUE NO. 2	4
CONCLUSION	6

ATTACHMENTS:

1. EXHIBIT A: Trial Court Transcript of Multiple Offender Hearing Criminal Docket No. 56595, 26th Judicial District Court, Bossier Parish, Louisiana
2. EXHIBIT B: Louisiana Habitual Offender Law, L.R.S. 15:529.1
3. EXHIBIT C: Louisiana Armed Robbery Statute, L.R.S. 15:64

TABLE OF AUTHORITIES

	Page
1. *Sones v. Hargett*, 61 F.3d 410 (5th Cir. 1995)	4
2. *Custis v. U.S.*, 114 S.Ct. 1732 (1994)	5
3. *Charlton v. Morris*, 53 F.3d 929 (8th Cir. Minn. 1995)	6
4. *Garlotte v. Fordice*, 115 S.Ct. 1948 (May 30, 1995)	6
5. *Maleng v. Cook*, 109 S.Ct. 1923 (1989)	6
6. 28 U.S.C. Subsection 2254	6

ANSWER FILED ON BEHALF OF THE STATE OF LOUISIANA
IN OPPOSITION TO PLAINTIFF'S PETITION FOR A WRIT OF CERTIORARI

A.

STATEMENT OF THE CASE

Richard F. Trest was convicted of armed robbery in March of 1979 in the 26th Judicial District Court for Bossier Parish, Louisiana. Mr. Trest testified on his own behalf at trial and during his testimony admitted under oath he had been convicted of burglaries in the State of Mississippi in 1976, served time in the Mississippi State Penitentiary and was released on February 2, 1978. After his Louisiana conviction, the State filed a habitual bill of information alleging that the defendant was a second felony offender due to his previous conviction in Mississippi for burglary. The defendant was served with this bill of information, pled not guilty and after trial thereon was deemed to be a second felony offender. The Court thereafter sentenced the defendant to 35 years at hard labor without benefit of probation, parole or suspension. The penalty for armed robbery in the State of Louisiana is a minimum of five (5) years to a maximum of ninety-nine (99) years, all of which is without the benefit of probation, parole or suspension of sentence. The defendant's conviction and sentence was affirmed by the Louisiana Supreme Court and defendant thereafter filed numerous petitions for post conviction relief. All of these were denied and defendant then pursued his cause in Federal Court by Habeas Corpus proceedings.

The defendant alleged in his Federal Petition, as Claim No. 7, "the evidence introduced by the State as to prior felony convictions was illegally entered into evidence."

This was previously alleged by Trest in State court post conviction relief applications, to no avail.

The State contended and the Louisiana Courts agreed that the defendant's habitual offender proceedings complied with minimum due process requirements guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. Likewise, the United States District Court for the Western District of Louisiana, Shreveport Division, found the habitual offender proceeding brought against the defendant by the State of Louisiana passed constitutional muster and the defendant's petition for Federal Habeas Corpus relief was denied. Trest took an appeal to the Fifth Circuit U.S. Court of Appeal and that court also denied him Federal Habeas relief.

The State of Louisiana shows that it believed petitioner had exhausted State remedies at the time that he filed his Federal Habeas Corpus proceedings in the U.S. District Court, Shreveport Division. Trest had styled his objection in # 7 as an objection to evidence presented by the State at his habitual offender trial. The Louisiana Courts ruled against this as well as the rest of Trest's claims for relief. The State has always contended all matters introduced at this hearing, including evidence as to his prior felony conviction, were properly admitted by the Court.

A.

ARGUMENT

1. **DID THE STATE WAIVE ANY DEFENSE HEREIN AS CONTENDED BY COUNSEL FOR TREST?**

Trest attacked his Louisiana armed robbery conviction and sentence on numerous grounds through numerous writs. One of these attacks filed in the State Court on January

17, 1990, was styled "*Motion to Correct an Illegal Sentence*". Item 7 in this pleading alleged "Evidence introduced by the State as to prior felony convictions was illegally entered into evidence."

The State denied these allegations based on the lower court records, which showed fundamental due process had been satisfied as to the habitual offender proceedings brought against Trest by the State of Louisiana. No court reviewing this matter to date has found otherwise.

The defendant made a collateral attack on his Mississippi burglary conviction which was part of his argument in his January 17, 1990 pleadings that evidence of the burglary conviction was illegally admitted by the Louisiana Trial Judge. The record of this hearing is attached hereto as Exhibit A. The record shows that the Louisiana Trial Judge properly admitted evidence of the defendant's Mississippi burglary conviction.

Upon reviewing Trest's January 17, 1990 pleadings, the Louisiana lower court termed this a technical objection without merit. The State shows this ruling was correct and that this was an improper collateral attack by Trest on his Mississippi burglary convictions.

The State of Louisiana has contended at all proceedings herein that the Mississippi convictions were admissible under all applicable laws. The State of Louisiana therefore contends that it has waived no grounds regarding the admissibility of defendant's Mississippi conviction at the habitual offender hearing or at any other time.

The focus here should be on whether or not Trest received fundamental due process in the Louisiana habitual offender proceedings against him. The record clearly shows that he did. Trest was given reasonable notice and an opportunity for a full and

complete hearing with the assistance of competent counsel. There was no question that Trest was in fact the same person that committed the burglaries in Mississippi and that he was represented by counsel at the time that these pleas were entered.

The Fifth Circuit relied on Sones v. Hargett, 61 F.3d 410 (5th Cir.1995) and held that Trest could not now collaterally attack his Mississippi burglary convictions for the same reasons set out in the Sones decision. Although the State of Louisiana did not cite the Sones decision, it contended at all stages of these proceedings that Trest's Mississippi burglary convictions were constitutionally sound, properly documented and were therefore correctly admitted into evidence by the Louisiana Trial Judge for consideration at the habitual offender proceedings.

The Fifth Circuit's reasoning in the instant case is basically one of finality of judgment. Since Trest has no standing in Mississippi to attack his burglary convictions, they should be considered final and not subject to collateral attack in other courts. Trest likewise alleges that he did not fully understand what he was doing when he pled guilty to Mississippi burglaries. As the Fifth Circuit pointed out in the Sones decision, this involves the factual as well as a legal issue and should not be considered for the first time on appeal. The Fifth Circuit's decision in Trest is sound and should not be disturbed by this Honorable Court.

A review of these entire proceedings leads to the inescapable conclusion that Trest was fairly treated by the State of Louisiana in all proceedings against him and there was no fundamental miscarriage of justice regarding his conviction or sentence.

ARGUMENT

2. IS TREST'S CLAIM PROPERLY REVIEWABLE IN FEDERAL HABEAS CORPUS PROCEEDINGS?

On appeal from U.S. District Court, the Fifth Circuit requested both counsel to address what application, if any, Custis v. U.S., 114 S.Ct., 1732 (1994) had to the Trest case. However, since the Fifth Circuit decided the case on the basis of Sones it did not consider the Custis issue, that is whether Trest was entitled to relief under Federal Habeas Corpus Statutes.

A review of the applicable statutes and jurisprudence pertaining thereto, clearly shows that Trest lacks Federal Habeas Corpus jurisdiction. Trest was not "in custody" for the purposes of his Mississippi convictions and therefore is barred from collaterally attacking those convictions. In Custis the court stated at Page 1738 as follows:

> "Custis invites us to extend the right to attack collateral prior convictions used for sentence enhancement beyond the right to have appointed counsel established in Gideon. We decline to do so."

The Custis decision bars collateral attack by Trest unless and only unless he did not have counsel at the time of his Mississippi convictions. This is clearly not the case.

Custis was ultimately determined to be still "in custody" for the purposes of his State conviction at the time of his Federal sentencing. By contrast, Richard F. Trest was not in custody in Mississippi when he committed armed robbery in Louisiana. Trest had fully completed his Mississippi sentence and they were no way related to the offense later committed in Louisiana. Therefore Trest's custodial situation is distinguishable from that of Custis and Trest cannot now collaterally attack his Mississippi convictions under

Federal Habeas Corpus, except on the basis of failure to have appointed counsel as an indigent.

The State also relies on Charlton v. Morris, 53 F.3d, 929 (8th Cir., Minnesota 1995). This case presents a situation identical to that of Trest's. The court found that Charlton was no longer in custody for a 1982 State conviction and therefore held that he could not collaterally attack his prior conviction, unless such attack was based on grounds of failure to appoint him counsel as an indigent.

Also, in Garlotte v. Fordice, 115 S.Ct., 1948 (May 30, 1995), the court again recognized that a defendant must be in custody under the conviction within the meaning of the Federal Habeas Statute, 28 U.S.C., Section 2254 (a). In the Garlotte case, the defendant was serving a sentence for marijuana conviction followed by a concurrent life sentences on two murder convictions. The court discussed the applicable law and held that Garlotte was still in custody under his marijuana conviction since he was still incarcerated under consecutive sentences. Since Trest had fully completed his Mississippi burglary sentences, had been released and went to Louisiana, his Mississippi sentence had therefore fully expired. He was not in the same circumstances as Garlotte, that is, "in custody."

It is also interesting to note in the Garlotte case that the court specifically discussed the applicability of Maleng v. Cook , 109 S.Ct.1923, which was decided in 1989. On Page 1951 of the Garlotte decision, the Court said as follows:

> The question presented in Maleng was "whether a Habeas petitioner remains 'in custody' under a conviction after the sentence imposed for it has fully expired, merely because of the possibility that the prior conviction will be used to enhance the sentences imposed for any subsequent

> crimes of which he is convicted."... we held that the potential use of a conviction to enhance a sentence for subsequent offenses did not suffice to render a person "in custody" within the meeting of the Habeas Statute.

As applied to Trest, since he was not in custody from his Mississippi burglary convictions at the time of the Louisiana proceedings against him and since he had court appointed counsel for his Mississippi burglaries, he has no right to colaterally attack his prior convictions used at the Louisiana sentence enhancement proceedings.

C.

CONCLUSION

The Fifth Circuit correctly determined that Trest was not entitled to Federal Habeas Corpus relief. This conclusion was reached by the Fifth Circuit under its decision in Sones v. Hargett. Not withstanding the Sones decision, Trest would still not be entitled to Federal Habeas Corpus relief under Custis v. United States. The decisions in Custis, Charlton v. Morris, Garlotte v. Fordice and Maleng v. Cook, require that a defendant be "in custody" to be entitled to Federal Habeas Corpus Relief. The only exception would be if Trest did not have court appointed counsel for his Mississippi burglaries. Since Trest was not in custody and did have counsel for his Mississippi convictions, he is not entitled to Federal Habeas Corpus relief, even assuming arguendo, that the Sones decision does not apply.

James M. Bullers
District Attorney
26th Judicial District
P.O. Box 69
Benton, LA 71006
Telephone: (318) 965-2332
Facsimile: (318) 965-2332

NO. 96-7901

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD F. TREST,
Petitioner

VERSUS

UNITED STATES OF AMERICA
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

I, James M. Bullers, a member of the Bar of this Court, hereby certify that on this ____ day of April, 1997, one copy of the State of Louisiana's Answer opposing Petition for Writ of Certiorari in the above entitled case was mailed, first class postage prepaid to the following: Rebecca L. Hudsmith, Attorney for Petitioner, 102 Versailles Blvd., Suite 816, Lafayette, LA 70501.

I further certify that all parties required to be served have been served.

James M. Bullers
District Attorney
26th Judicial District
P.O. Box 69, Benton, LA 71006
Telephone: (318) 965-2332
Facsimile: (318) 965-2233

EXHIBIT A

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

IN AND FOR THE PARISH OF BOSSIER

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS CRIMINAL DOCKET NO. 56595

RICHARD FRANKLIN TREST

EVIDENCE adduced on motion to quash and multiple offender hearing in the above entitled and numbered cause by His Honor, Cecil C. Lowe, Judge for the Twenty-Sixth Judicial District Court, in and for the Parish of Bossier, State of Louisiana, on the 8th day of June, 1979, at Benton, Louisiana.

APPEARANCES

Mr. A. L. Blondeau
Assistant District Attorney
Bossier Parish Courthouse
Benton, LA 71006

Mr. Patrick Phillips
Attorney at Law
1005 Benton Road
Bossier City, LA 71111

RECORDED BY:

Ms. Ann St. Claire
Court Reporter
Bossier Parish Courthouse
Benton, LA 71006

TRANSCRIBED BY:

Ms. Carol St.Germain
Official Court Reporter
Bossier Parish Courthouse
Benton, LA 71006

FILED

AUG 19 1989

DEPUTY CLERK
26TH JUDICIAL DISTRICT COURT
BOSSIER PARISH, LOUISIANA

MR. BLONDEAU: Your Honor, state's ready to proceed in multiple offender hearing of Richard Franklin Trest.

THE COURT: Mr. Phillips, is the defendant ready to proceed.

MR. PHILLIPS: May it please the court, before we get in on the hearing on the multiple offender bill of information, I would like at this time to file the motion in arrest of judgment based on a recent United States Supreme Court case requiring unanimous verdict. For a conviction in six man jury cases which I think is applicable to twelve man jury cases, court recalled in this case the jury turned an eleven to one verdict of guilty, and in a recent case of Birch versus Louisiana, it was held that a non-unanimous verdict was a denial of defendant's right to a trial by jury and that such a non-unanimous verdict would not stand. We would suggest to the court that the same principle is applicable in this case, that a non-unanimous verdict is a deprivation of a right to trial by a jury, cannot be allowed to stand.

MR. BLONDEAU: Your Honor, if I may briefly reply to that. I believe that the specific issue Louisiana jury system was rated, I believe it was a case of Duncan versus Louisiana in the United States Supreme Court in where they held that a nine out of twelve on the old Louisiana statute was constitutionally permissible. The case which Mr. Phillips refers to dealt strictly with a six man jury, and I believe that they, they said in the case,

if I'm--if I'm not correct--if I am correct, that, that because of the fact that the six man jury was a minimum amount of jurors that could actually try a person, that in that case it required a unanimous verdict. And I don't believe the case can be read any inferentially as inferring that the ten out of twelve verdict, much less an eleven out of twelve verdict would be unconstitutional under the laws of this state or the United States Constitution.

MR. PHILLIPS: The--The docket case of course to which the state refers was prior to the Birch case of course of course insofar ...(inaudible).. no longer applicable, but my position is and I think that logically is consistent that if five out of six is not constitutionally permissible for a verdict of guilty, then it would not be logical to say that you could double that number and take ten out of twelve and thereby render the verdict constitutional. If five out of six is unconstitutional, then ten out of twelve, or eleven out of twelve, is unconstitutional. It's simply a, a compounding of the error, which the supreme court is Birch versus Louisiana held was not constitutionally permissible. And I think that simply doubling the number of jurors and requiring the same percentage for conviction in a twelve man jury as you do in a six man jury is likewise unconstitutional. I believe that the jury's verdict against this defendant and the pronunciation of guilty is, was an unconstitutional verdict and cannot be allowed to stand. I think that the verdict should be arrested and new trial ordered.

THE COURT: The case referred to ...(INAUDIBLE)...the close reading of that case, that the court goes over its previous ruling first wherein it said five men on the jury was not enough. Then in this particular thing there they indicated that six would be enough in that case. Now in the case you're referring to, they say where you have such a small number of jurors in that instance, they they're dealing in numbers. That it would require a unanimous verdict of the six jurors. However, I believe from the language that they make no comment as to jurors that are twelve in number or larger in number than six. I think that case is dealing with a minimum number and when you're dealing with a minimum that they're going to approve and the number of jurors to handle a case, then they're going to say it's going to have to be unanimous when you're minimum. But no ruling that I can understand in reading that case dealing with the jury of twelve members. Therefore, the motion to arrest the judgment is denied.

MR. PHILLIPS: May it please the court, prior to beginning the hearing on the multiple offender bill of information, I'd like to file a motion to quash the multiple offender--multiple offender bill of information and request opportunity to present evidence on a motion to quash.

THE COURT: I'm going to let you present evidence in connection with it.

MR. PHILLIPS: Call Mr. A. L. Blondeau to the stand.

MADAM CLERK: (SWEARS WITNESS)

ALEXANDER L. BLONDEAU, JR.

Called as a witness by counsel for the defendant, after having been first duly sworn, was examined and testified as follows:

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Will you state your full name please?

A Alexander L. Blondeau, Jr.

Q You are the assistant District Attorney for Bossier Parish, Louisiana?

A I am.

Q You were the assistant district attorney responsible for the prosecution of the case of State of Louisiana versus, versus Richard Trest?

A I was.

Q In connection with the preparation of that case for trial, Mr. Blondeau, is it not a fact that you told myself and Mr. Trest that if the defendant elected to go to trial that he would be prosecuted as a multiple offender?

A In the event that he as convicted. Yes. I also told you that if he did not--That if he entered a guilty plea, that I would not prosecute him as a multiple offender.

Q That if he entered a guilty plea, he would not be prosecuted as a multiple offender, but that if he elected to be tried by a jury, you would prosecute him as a multiple offender?

A That if he made the state go through the necessity

of proving his guilt by a jury trial that, that I would file a multiple offender bill and I did in fact file the multiple offender bill. That's what we're here for today.

Q But if the defendant had not elected to be tried by a jury, you would not have filed a multiple bill?

A If he had pled guilty, I would not have filed a multiple offender bill. I did--That was not That was my offer to you in exchange for a guilty plea.

Q Okay if he had pled guilty, you would not file a multiple offender bill, but if he elected to exercise his right to trial, that you would file a multiple offender bill. Is that correct?

A If he was convicted and went to trial, I said I would file a multiple offender bill and I have honored my promise to you.

Q I have no further evidence.

THE COURT: You have made your record. Do you have any argument?

MR. BLONDEAU: I have no evidence Your Honor.

MR. PHILLIPS: Other than to state your Honor that the, the threat by the state of prosecuting a defendant as a multiple offender solely as punishment for his exercising his constitutional right to trial by a jury, is an unconstitutional exercise of power by the office of the District Attorney and the multiple offender bill of information utilized for that purpose should be quashed and not allowed to stand.

MR. BLONDEAU: Your Honor, first of all

I'd like to say to you--Your Honor's attention the case of Warden Kurper versus Hays. That's a United States Supreme Court case 98 Supreme Court 663, 1970 case in which an identical issue was raised in a Kentucky case in which the, the Kentucky prosecutor under their statute they could file a habitual offender bill even before the trial. Of course, in the Louisiana case, I can't even file habitual offender bill until after the man has been convicted. But in that case, the United States Supreme Court clearly addressed the issue and held that this was a legitimate plea bargain technique by the State, and in fact they, they commanded the prosecutor for being straight forward about what he would do. And specifically held that it was constitutional. There's also been I believe several state cases which have addressed that issue. Louisiana Supreme Court cases. I don't have the citations available, but they have also indicated that it's a legitimate exercise of the prosecutor's role to engage in plea bargain techniques such as this. I have a copy of that case if you'd like to.

THE COURT: I have a--I don't need to see that. I haven't seen that particular case, but I have reviewed some of the cases prior to today dealing with this multiple offender proposition only. The same plea bargain technique used by the District Attorney has been used previously in this state and the court has stated that that was a function that they could do. I mean they have a right to file a bill or not file a bill and just as they have a

right to enter in plea bargains and negotiated pleas and reduce the offenses, so the motion to quash is denied.

MR. BLONDEAU: Any further motions Mr. Phillips. Are you ready to proceed?

MR. PHILLIPS: No further motions.

MR. BLONDEAU: May I proceed Your Honor?

THE COURT: You may proceed. Now for the record has -- Does the defendant desire -- Has the defendant been arraigned on a multiple offender bill?

MR. BLONDEAU: Yes he was Your Honor. On April 24, 1979, and pled not guilty and that he was not--I guess that he was not the guy. I don't know what the correct...

THE COURT: Alright then you may proceed.

MR. BLONDEAU: Your Honor, you have the bill of information in this matter? I need the bill of information...(inaudible)...Your Honor, I'd like to at this time mark the original bill of information in this matter as state exhibit 1 for identification and offer and introduce that bill of information into evidence.

THE COURT: Mr. Phillips. Any objection.

MR. PHILLIPS: I don't have an interjection to interpose at this time.

THE COURT: Let the offering be received in evidence.

MR. BLONDEAU: I'd also like to

introduce into evidence a document I've marked as State Exhibit 2 en globo. Certified conviction record of the defendant. Mr. Phillips has seen a copy of this previously.

MR. PHILLIPS: We would object to the introduction of the, of the cover letter or any of the other documents which are not properly marked to show that they are certified by this attached form certificate. The--There seems to be a lot of documents stapled together here, but I don't know which goes with which, who prepared them or who put them in that position. There are Xerox copies bearing no certification under the form, ...(inaudible).. certificate from the director of records. I would object to the introduction of any of these documents until it's properly shown that these are the documents that were in fact certified.

THE COURT: ..(INAUDIBLE)... I think the objection really is only to the cover letter, and I think we can eliminate the cover letter. I mean I don't think it has no bearing.

MR. PHILLIPS: My objection is to the cover letter, the photograph and the finger prints. All of those documents which are stapled prior to the certification document itself.

THE COURT: Let the objection be noted. Let the offering be received into evidence.

MR. BLONDEAU: With the exception of the cover letter Your Honor?

THE COURT: With the exception of the cover letter.

MR. BLONDEAU: Let me remark that.

MR. PHILLIPS: May it please the court. Request that the court note my objection is to those document which are stapled in front of the certification. And which are not properly identified to belong to the certification any more than the cover letter is identified as belonging to the certification.

THE COURT: Alright, let the objection be noted.

MR. BLONDEAU: I'd like to point out Your Honor for the record that the, that the card that he refers to does contain a name of Richard Frank Trest and that the picture contains his name and a picture of the individual and ask that the court take judicial notice of the, of the--insofar as the admissibility --identification of these records with the remainder of the record, if the court do that. Also I'd like to offer and introduce the documents I've marked as State Exhibit 3 for identification which is an excerpt of the transcript from the testimony of the defendant at the trial on the merits, certified by Kay Rachal as the court reporter as being a true and correct trans--excerpt of the court ..(inaudible)...testimony.

THE COURT: Got any objection to that offering Mr. Phillips.

MR. PHILLIPS: (no answer heard.)

THE COURT: Let the offerings identified be received into evidence.

MR. BLONDEAU: At this time call Mr. Ron Thiebaud to the stand please.

RON THIEBAUD

Called as a witness by counsel for the State, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLONDEAU:

Q State your name and address for the court please.

A Ron Thiebaud, 215 Chimney Lane, Haughton, Louisiana.

Q And where are you employed Mr. Thiebaud?

A Bossier Parish Sheriff's Department.

Q In what capacity?

A Deputy Sheriff.

Q And how long have you been--been so employed there?

A Three years.

Q Would you describe for the court briefly the nature of your duties as a deputy here in Bossier Parish?

A I'm assigned to the identifications division of our department. My duties are to assist in crime scene investigations to help preserve and collect evidence from those crime scene to properly photograph and preserve the evidence that has been collected. My general duties as far as office procedures are concerned, I am responsible for the finger printing and photographing of those individuals who are incarcerated in Bossier Parish jail and I am custodian of those finger prints and it's my job to classify and properly file the cards once they are classified.

Q Okay is every--Is every individual who is booked into the jail finger printed?

A That's correct.

Q And is everyone of these classified and filed by you?

A Yes they are.

Q Approximately how many finger prints have you classified in the past three years that you've been with the department?

A I'd say several thousand in the last three years.

Q Okay. Now you stated you are the records custodian of Bossier Parish?

A That's correct.

Q I'm going to show you at this time a document which I've marked as State Exhibit 4 for identification, which purports to be a, a booking card on Richard Franklin Trest and ask you if you can identify that, that document?

A Yes sir. This is one of our cards that has identification markings on the top of the card and also has my signature attached to it, wherein I classified this card as a record for our department.

Q And does it indicate to whom that card belongs?

A Richard Franklin Trest.

Q Alright now you stated that these cards were taken on every individual that enters the jail and booked into the jail, is that correct?

A Every felony conviction or impersonators charged with felony charge. It's of course, printed on one of those cards?

Q And is that part of your standard procedure?

A That is our standard procedure. Yes sir.

Q And these are kept in your ordinary course of business is that correct?

A That's correct.

Q And you are the custodian of this record?
A Yes sir.

MR. BLONDEAU: Your Honor, at this time, I'd like to offer and introduce into evidence, State Exhibit 4 for identification. It's state exhibit 4.

THE COURT: Any objection Mr. Pat.

MR. PHILLIPS: I have no objection.

THE COURT: Let the offering identified as State Exhibit 4 be received in evidence.

Q Mr. Thiebaud, could you now describe to the court your, your general educational background please.
A I'm a graduate of North Caddo High School in Caddo Parish. I attended Northwestern State University. I have 145 hours towards a bachelor's degree in education. I have attended a personnel management school which is sponsored by the President Association of National Retail Merchant's Association. I have nine semester hours in Bossier Community College and Criminology.
Q Okay.
A The basis of my education.
Q Now would you describe for the court also your training as an identification officer and/or finger print examiner?
A A graduate of the Northwest Regional Police Academy. I have attended several special schools which are are pilot courses from the Northeast Louisiana University that were held at the Northwest Criminalistic Laboratory in Shreveport. There is-- One of those schools is a basic finger print

technology school, which I'm a graduate of. An advance finger print technology school.
Q Did you graduate from that one also?
A Yes I did, and the evidence technician school that is offered by Northeast Louisiana School.
Q Did you graduate--Did you also graduate from there?
A Yes. I graduated from all three of those.
Q Did you receive certificates from each one of these?
A Yes I have.
Q Have you attended any other seminars or anything else in the ..(inaudible)..
A Yes sir, I've attended several different seminars concerning the crime scene investigations and homicide investigations. I have also received training--eight weeks training in Sheveport Police Department, I. D. Division as a trainee in latent finger print comparisons.
Q Did you complete that course also?
A Yes I did.
Q Of that training. Let me ask you this. Have you completed all standard training for finger print examiners?
A Yes sir I have.
Q Okay. And you have been examining finger prints you say for the last three years. Is that correct?
A I have.

MR. BLONDEAU: Your Honor, at this time I'd like to tender Deputy Thiebaud's as expert in the field of finger print identification.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Mr. Thiebaud, do you consider yourself to be an expert in identifying finger prints?

A I consider myself qualified to examine finger prints, yes sir.

Q My question was do you consider yourself to be an expert in that field?

A I have not been accepted by the court as an expert. You want my personal opinion?

Q Yes sir.

A Yes sir.

Q Have you been accepted by this court before as a finger print expert?

A No sir, I have not.

Q Have you been accepted by any court as a finger print expert?

A No sir I have not.

Q Have you ever compared finger prints and testified in court that they are identical?

A I have compared prints. I have not had to testify on the comparisons.

Q You never had occasion to testify concerning finger prints?

A That's correct.

Q I believe you testified that you classified finger prints?

A That's correct.

Q What does that mean?

A The classification of a print is done through a formulated system known as the Henry system, which

has been in our country since the early 1900's. It is the basis of that formula which we file finger prints. They're not filed by alphabetical listing or the numerical listing, but by the formula itself, derived from the characteristics of the patterns.

Q How many different characteristics do you have?

A There are three general groupings of finger prints. When these general groupings are taken, the only thing we concern ourself with in classification is the finger tips of the fingers themselves. These general groupings are found on the finger tips, the general groupings being described or called loops, whirls and arches. They can be subdivided into subgroups.

Q Do you--In connection with your work with the Sheriff's Department, do you subdivide those subgroups?

A Yes you do.

Q In all cases?

A All cases.

Q How many subdivisions are there in each of the three major groups?

A The three major groups in the loops category, there are two subdivisions, there are three, three subdivisions in the four--four subdivisions in the whirls and two subdivisions in the arches.

Q Are there any other subgroups?

A The groupings can be broken out further. We do not break them out further in our department because the volume of our finger prints that we take in at the Bossier Parish Sheriff's Department do not

necessitate going to any other great lengths in these ..(inaudible)..out of the groupings.

Q So as I understand what you're saying, there are three major groups of finger prints, the loops, the swirls and the arches. And under those three there are two different types of loops, four different types of swirls and two different types of arches?

A That's correct.

Q Which gives you a total of eight categories?

A That's correct.

Q And your job has been to place these finger prints in the proper file under each of those eight categories?

A Based on the formula that is used.

Q Based on what kind of formula?

A On the Henry system formula.

Q What is that formula?

A The formula is consists of a different amount of numerical figures and letterings that are derived from the patterns of the finger prints themselves.

Q How do you derive these numerical figures?

A By the rules that are set forth in the formula.

Q Is it a complicated formula?

A Yes it's complicated.

Q But basically your, your association with finger print data and finger prints has been to separate them into these eight basic groups?

A That's only one area that I concern with the finger print.

Q What are the other areas?

A In the field of crime scene technology as far as the

latent or invisible prints that can be processed and found at crime scenes in comparison to these finger prints that we're talking about classified and filed. But you've never had an opportunity to be qualified as an expert or to testify in court that certain finger prints matched?

A That's correct.

MR. PHILLIPS: I have no further questions concerning Mr. Thiebaud's qualifications. I do not agree that his training and experience in classifying finger prints or in lifting latent prints from a crime scene would qualify him as an expert to make comparisons of different sets of prints taken by different persons and testified that they are or are not the same. He's not shown that he's had sufficient experience in that area, other than the taking of finger prints, the lifting of finger prints, and the classification of finger prints.

RE-DIRECT EXAMINATION

BY MR. BLONDEAU:

Q Let me ask you this Deputy Thiebaud. You have had occasion to actually compare finger prints, have you not?

A Yes sir, I have.

Q Knowns with unknowns or knowns with...Is that correct?

A That's correct.

Q And have you actually done that in, in active criminal cases?

A Yes sir I have.

Q And what was the rea--And you said you did not testify in this case, what was the reason that you didn't testify in this case?

A Convictions were brought about either by a plea to a lesser sentence or by a guilty plea.

Q And I believe you did state on the record that you have completed all of the schooling since three years ago, two years ago I believe you said that is necessary for qualification as a finger print examiner. Is that correct?

A That's correct.

Q That's all I have Your Honor.

THE COURT: Deputy Thiebaud, will you.. oh you want to...

RE-CROSS EXAMINATION

BY MR. PHILLIPS:

Q Let me ask one other question. You said you completed all the schooling necessary for the qualification as a finger print examiner. You telling me there's no other school that you can go to?

A No sir, that is the standard schools they are offered as a finger print examiner. There are schools that come abreast every day which I do attend periodically throughout the year. Anytime there are new techniques that come about we do, we do attend these of course to stay abreast of what we need to know.

Q Excuse me. When was your last school attendance?

A My last school attendance?

Q Yes sir.

A In conjunction with finger prints?

Q Yes sir.

A Would have been the latter part of last year, November I believe we completed the last course in advance finger print technology.

Q Okay did that deal with lifting finger prints?

A That dealt with all-- with all phases of it, classification, the latent examinations and the comparisons of the two. It was an advance course in latent finger print examinations.

Q Have you received any type of certificate that you are a certified finger print examiner?

A There is no such certificate.

Q Excuse me, I had understood when you answer...

A There is a certificate for the completion of the

course.

Q .....(inaudible)... goes through the course.

A I do have--I do have a certificate that says I did--I am a graduate of the advance finger print school. Yes sir.

Q Is everyone who goes through the course that you're talking about an expert in examining and comparing finger prints?

A I can only speak for myself Mr. Phillips.

Q Do you consider that going through the course is sufficient to make whoever completes that course an expert?

A I would say yes.

Q All you got to do is go to school and you become an expert?

A That--That again would depend on the individual and depend on whether or not he would be accepted by a judicial court as an expert.

Q Correct me if I'm wrong, but I believe that a moment ago when you were answering Mr. Blondeau's questions, you said that you have completed all of the courses necessary to be a certified finger print examiner or something to that effect. Do you recall that testimony?

A I have completed the standard courses that are available that anyone training in this field would --I wouldn't say necessarily would be responsible to take part of, but for him to be sufficient and qualified in his field, he would need these courses.

Q By referring to them as standard courses, who, who has made the determination that they, that these

courses are standard courses?

A I--I do not know that. This is just the acceptance as far as our part of the state or the State of Louisiana is concerned, who has certified--as far as I know, they're not certified courses. I'm sure there are other college and universities throughout the state that offer the same type programs that we have here in our area.

Q Okay you say that's what's accepted in this part of the state, accepted by whom Mr. Thiebaud?

A I don't believe I understand your line of questioning there.

Q You said those are the courses that are accepted in this part of the state. And what did you mean by that?

A The agencies in our area usually participate and take part. Their identification people take part in these courses that are offered.

Q That's not to say is it Mr. Thiebaud that there is some higher authority which specifies that these are the necessary courses to take in order to qualify one to become a finger print expert?

A I'm not aware of any high authority. As I said I do not know of a certification certificate that can be given to an individual....

Q So what you're saying is that's...

A ...to say he is an expert.

Q That's all that's available in the area.

A That's correct.

MR. PHILLIPS: I have no further questions.

THE COURT: Deputy Thiebaud, you said that you had never qualified before in court as an expert. Have you ever been refused to be recognized as an expert in court before?

MR. THIEBAUD: No sir, I have not.

THE COURT: There's always a first time that an expert has to be qualified to testify in court. The court will accept Deputy Thiebaud as an expert in the field tendered. And at this time we'll take a ten minute recess.

MR. PHILLIPS: For the record at this time, I will object to the court's ruling recognizing Deputy Thiebaud as an expert and request that my objection be noted for the record.

THE COURT: Let the objection of Mr. Phillips' of the court's acceptance of Mr. Thiebaud as an expert be noted.

(COURT RECESS)

THE COURT: The defendant's returned to the courtroom Mr. Sheriff we'll have order.

MR. SHERIFF: Let's have order.

THE COURT: You may proceed Mr. Blondeau.

MR. BLONDEAU: Thank you Your Honor.

RE-DIRECT EXAMINATION

BY MR. BLONDEAU:

Q Mr. Thiebaud, I'm going to hand you a document which has previously been introduced into evidence as State Exhibit 1, which is the copy of the bill of information in which the defendant finger prints were affixed in accordance with, with law upon his conviction. And also hand you state exhibit 2 for identification which is ..inaudible)... on these two documents.

A Yes sir I have seen both of these documents and I have compared the prints on the documents.

Q Okay, and what was your determination when you prepared those two sets of documents?

A They are one in the same. The prints on the bill of information and the prints there on the certified copy are the same prints.

Q I now hand you exhibit 4 for identification which you previously identified as the arrest record or booking card for Richard Franklin Trest. Is that correct?

A Yes sir.

Q Have you had occasion to compare that card with both the finger prints on the bill of information and the Mississippi conviction record finger prints?

A Yes sir I have.

Q And have you made a determination as to whether or not those prints match?

A Yes sir, they're all three the same prints.

Q And is it your opinion that all of these finger prints were made by the same individual?

A Without doubt. Yes sir.

MR. BLONDEAU: I tender Your Honor.

MR. PHILLIPS: I have no questions.

THE COURT: Thank you Mr. Thiebaud.

MR. BLONDEAU: That's all the evidence the state has.

THE COURT: Mr. Phillips?

MR. PHILLIPS: The defense has nothing.

THE COURT: Of course the court can take judicial notice of what goes on in its own courtroom. Mr. Trest at the trial of this case which I presided over took the stand and testified and freely admitted to having committed these offenses. The additional evidence that we have into the record is really a corroboration of the fact that he has admitted from this stand. So I find that he is a multiple offender. However, these particular offenses that were charged were charged under one information. Five charges were the sentences all received on the same day?

MR. BLONDEAU: They were Your Honor.

THE COURT: Which the court shall consider one offense. Therefore this defendant will be a second offender in the opinion of the court under the statute and I think under the ruling of the cases as I appreciate them State versus Shamburg, 344 So. Reporter Second, at page 1002, which is a 1977 case, wherein the court also refers to State ex rel Jackson versus Henderson, 283 So.2d, 210 1973, where the court held that four previous

convictions entered on the same day, should be treated as one for applying the multiple offender statute. This is contrary to some previous cases, but that's the law as I appreciate it.

MR. BLONDEAU: The state agrees with Your Honor's appreciation of the law.

THE COURT: Now we come to the matter of the remand for sentence. You are Richard Franklin Trest?

MR. TREST: Yes I am.

THE COURT: Mr. Trest, you are represented -- were represented at your trial with a charge of armed robbery under 56,394 by Mr. Pat Phillips of the Indigent Defender Board. Is that correct?

MR. TREST: As far as Pat Phillips. Yes.

THE COURT: And a jury has found you guilty, and I have ordered a pre-sentence report to be made and received that report. Subsequent to that, the district attorney has filed the multiple offender bill which we have just had a hearing on and you are remanded--were remanded this date for sentence. Are you ready for your sentence. Are you ready for your sentence sir?

MR. TREST: Yes I am.

THE COURT: Mr. Trest, how old are you sir?

MR. TREST: I'm 21.

THE COURT: The crime of armed robbery carries a minimum sentence of five years at hard labor,

with a maximum sentence of ninety-nine years. This sentence is without the benefit of probation, parole and suspension. You have been found to be a multiple offender. Therefore, the minimum sentence that you may receive in this court is a sentence of one-third of the maximum that you could receive as a first offender. That is the minimum sentence that I can give you is thirty-three years. The maximum sentence under the statute which you have just been convicted as a multiple offender is twice the maximum of the original or 198 years. My discretion therefore, is sentencing guidelines as provide by the law is remedied within those brackets. The --You're a young man. And the court has found that your offenses took place that put you in Mississippi all on the same time. Because of your age, it is the sentence of this court that you be committed to Louisiana Department of Corrections for incarceration at hard labor, without the benefit of parole and probation, and suspension of sentence, for a period of thirty-five years. Do you understand your sentence?

MR. TREST: Yes I do.

THE COURT: Do you understand that you have a right to appeal your sentence in all these proceedings that have been had against you?

MR. TREST: Yes I do.

THE COURT: Alright.

CERTIFICATE

I, CAROL ST. GERMAIN, hereby certify that the foregoing typewritten pages constitute a true and correct transcript of my audiograph recording of the evidence that was taken on the trial of the foregoing entitled and numbered cause on the date and at the place set forth on page one hereof.

DATED: AUGUST 18, 1989

Carol St. Germain

CAROL ST. GERMAIN
COURT REPORTER

EXHIBIT B

CHAPTER 3. HABITUAL OFFENDER LAW

Sec.

529.1. Sentences for second and subsequent offenses; certificate of warden or clerk of court in the state of Louisiana as evidence.

R.S. 15:529.1, now, under this Chapter heading, was, as the section existed before 1966, under the heading of former Part XXVII of former Chapter 1. Former Part XXVII was redesignated as this Chapter 3 by Acts 1966, No. 311, § 3, and on authority of R.S. 24:253, effective January 1, 1967.

The section number and section were not changed. Former R.S. 15:555, in former Part XXVIII of former Chap. 1, was transferred to the new Chapter 1, Code of Criminal Procedure Ancillaries, and redesignated as R.S. 15:291, on authority of R.S. 24:253, effective January 1, 1967.

The designation of former Part XXVIII was deleted by Acts 1966, No. 311, § 3, and on authority of R.S. 24:253.

R.S. 15:521 to 15:529, R.S. 15:529.2 to 15:554, and R.S. 15:556 to 15:564 were repealed by Acts 1960, No. 360, § 3; Acts 1964, No. 516, § 1; Acts 1966, No. 310, § 5, eff. Jan. 1, 1967; Acts 1966, No. 311, § 1, eff. Jan. 1, 1967. For disposition of the subject matter of the repealed sections, see Concordance Table at the head of this Volume.

§ 529.1. Sentences for second and subsequent offenses; certificate of warden or clerk of court in the state of Louisiana as evidence

A. Any person who, after having been convicted within this state of a felony, or who, after having been convicted under the laws of any other state or of the United States, or any foreign government or country of a crime which, if committed in this state would be a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:

(1) If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-third the longest term and not more than twice the longest term prescribed for a first conviction;

(2) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then,

(a) The person shall be sentenced to imprisonment for any term not less than one-half the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction; or

(b) If the third felony and each of the two prior felonies involved a violation of R.S. 14:34, R.S. 14:62.1, R.S. 14:65, R.S. 14:110(B), or of any crime punishable by imprisonment for more than twelve years, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(3) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then,

(a) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life; or

(b) If the fourth or subsequent felony and two of the prior felonies involved a violation of R.S. 14:34, R.S. 14:62.1, R.S. 14:65, R.S. 14:110(B), or of any crime punishable by imprisonment for more than twelve years, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

B. It is hereby declared to be the intent of this Section that an offender need not have been adjudged to be a second offender in a previous prosecution in order to be charged as, and adjudged to be, a third offender, or that an offender have been adjudged in a prior prosecution to be a third offender in order to be convicted as a fourth offender in a prosecution for a subsequent crime. Provided, however, that the offender shall be deemed a second offender only if the crime resulting in the second conviction shall have been committed after his first conviction; that one shall be deemed a third offender under this Section only if the crime resulting in the third conviction shall have been committed after his conviction for a crime which in fact caused him to be a second offender, whether or not he was adjudged to be a second offender in the prior instance; and that one shall be deemed to be a fourth offender under this Section only if the crime resulting in the fourth conviction shall have been committed after his conviction for a crime which in fact caused him to be a third offender, whether or not he was adjudged to be a third offender in the prior instance.

C. This Section shall not be applicable in cases where more than five years have elapsed since the expiration of the maximum

sentence, or sentences, of the previous conviction, or convictions, and the time of the commission of the last felony for which he has been convicted. In computing the period of time as provided herein, any period of servitude by a person in a penal institution, within or without the state, shall not be included in the computation of any of said five year periods.

D. If, at any time, either after conviction or sentence, it shall appear that a person convicted of a felony has previously been convicted of a felony under the laws of this state, or has been convicted under the laws of any other state or of the United States; or any foreign government or country of a crime, which, if committed in this state would be a felony, the district attorney of the parish in which subsequent conviction was had may file an information accusing the person of a previous conviction. Whereupon the court in which the subsequent conviction was had shall cause the person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegation contained in the information and of his right to be tried as to the truth thereof according to law and shall require the offender to say whether the allegations are true. If he denies the allegation of the information or refuses to answer or remains silent, his plea or the fact of his silence shall be entered on the record and the judge shall fix a day to inquire whether the offender has been convicted of a prior felony or felonies, as set forth in the information. If the judge finds that he has been convicted of a prior felony or felonies, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted, the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence if already imposed, deducting from the new sentence the time actually served under the sentence so vacated.

E. Whenever it shall become known to any superintendent or prison, probation, parole, police, or other peace officer, that any person charged with or convicted of a felony has been previously convicted within the meaning of this Section, he shall immediately report the fact to the district attorney of the parish in which the charge lies, or the conviction has been had.

F. The certificates of the warden or other chief officer of any state prison, or of the superintendent or other chief officer of any penitentiary of this state or any other state of the United States, or of any foreign country, or of any chief officer of any parish or county jail in this state or any other state of the United States, or of the clerk of court of the place of conviction in the state of Louisiana, under the seal of his office, if he has a seal, containing the name of the person imprisoned, the photograph, and the fingerprints of the per-

son as they appear in the records of his office, a statement of the court in which a conviction was had, the date and time of sentence, length of time imprisoned, and date of discharge from prison or penitentiary, shall be prima facie evidence of the imprisonment and of the discharge of the person, either by a pardon or expiration of his sentence as the case may be under the conviction stated and set forth in the certificate.

Acts 1956, No. 312, §§ 1 to 4. Amended by Acts 1958, No. 469, § 1; Acts 1978, No. 424, § 1; Acts 1979, No. 199, § 1.

History and Source of Law

Acts 1956, No. 312, § 5, repealed R.S. 1950, 15:529.1 and §§ 1 to 4 enacted parallel provisions which were set out under the same section number.

The 1958 amendment added the last three sentences to subsection D.

The 1978 amendment rewrote paragraphs (2) and (3) of subsection A, which had provided:

"(2) If the third felony is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then the person shall be sentenced to imprisonment for any term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction;

"(3) If the fourth or subsequent felony is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then the person shall be sentenced to imprisonment for the fourth subsequent felony for a determinate term not less than the longest term prescribed for a first conviction and not more than his natural life and in no case less than twenty years."

The 1979 amendment added "or clerk of court in the state of Louisiana" to the section heading and, in subsection F, added "or of any chief officer of any parish or county jail in this state or any other state of the United States, or of the clerk of court of the place of conviction in the state of Louisiana," and deleted, following "prima facie evidence", "on the trial of any person for a second and subsequent offense".

Prior Laws:

Acts 1855, No. 120, § 118.
R.S.1856, p. 155 (§ 119).
R.S.1870, § 974.
Acts 1928, No. 15, §§ 1 to 3.
Acts 1928, No. 16, § 1.
Acts 1938, No. 422, § 1.
Acts 1942, No. 45, §§ 1 to 4.

Title of Act:

An Act in relation to second and subsequent offenders convicted of felony violations, their sentence and resentence and prescribing the penalties and specifically repealing LSA–R.S. 15:529.1, and all laws or parts of laws in conflict herewith. Acts 1956, No. 312.

Cross References

Beverage and food containers, unlawful use, second offenses, see R.S. 51:243.
Candies or sweets, violation of license requirements, second offenders, see R.S. 14:357.
Contempt, second and subsequent offenses, see R.S. 13:4611.
Controlled dangerous substances,
Probation and suspension of sentence, see LSA–C.Cr.P. art. 893.
Second or subsequent offenses, see R.S. 40:982.
Diminution of sentence for good behavior prohibited as to habitual offenders, see R.S. 15:571.3.
Dogs, theft, second and subsequent offenses, see R.S. 14:67.2.
Imprisonment in prison districts, see R.S. 15:302.
Indictment, method of alleging prior conviction, see LSA–C.Cr.P. art. 483.

EXHIBIT C

SUBPART B. BY MISAPPROPRIATION WITH VIOLENCE TO THE PERSON

§ 64. Armed robbery

A. Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon.

B. Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than five years and for not more than ninety-nine years, without benefit of parole, probation or suspension of sentence.

Amended by Acts 1958, No. 380, § 1; Acts 1962, No. 475, § 1; Acts 1966, Ex.Sess., No. 5, § 1; Acts 1983, No. 70, § 1.

Reporter's Comment

Louisiana statutes covered:

R.S.1870, § 809 (robbery).

R.S.1870, § 810 (robbery of bills, notes or certificates).

Acts 1890, No. 14, § 1 (train robbery).

Source and scope:

As stated in Act 50 of 1805, the Louisiana Legislature has adopted the common law definition of robbery as it existed previous to that time. There does not appear to have been any change in the elements of this crime since 1805. The common-law definition is aptly stated in the California Penal Code (1933) § 211 and it is from that source that this section was adopted, with very few changes.

From the person of another:

The words "taking from the person * * * of another" as used in connection with the common law definition of robbery are not restricted in application to those cases in

which the property taken is in actual contact with the person of the one from whom it is taken, but, if the property is away from the owner, yet under his control, for instance in another room of the house, it is nevertheless in his possession, and if he is deprived thereof, it may well be said it is taken from his possession. See State v. Verret, 174 La. 1059, 142 So. 688 (1932).

"Anything of value":

The phrase "anything of value" was preferred to "property," in order to obviate the difficulties of the common-law interpretation, which holds that dogs, electricity, and gas are not property. Therefore, "anything of value" is to be applied in its broadest sense to include all things, tangible or intangible. See R.S. 14:2.

History and Source of Law

Source:

Acts 1942, No. 43, § 1, Art. 64.

Prior Laws:

Acts 1805, No. 50.

R.S.1870, §§ 809, 810.

Acts 1890, No. 14, § 1.

As originally contained in the 1950 Revised Statutes, the section read:

"Armed robbery is the theft of anything of value from the person of another or which is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon.

"Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than one nor more than fifteen years."

The 1958 amendment increased the penalty from imprisonment at hard labor from not less than 1 nor more than 15 years to not less than 2 nor more than 30 years.

The 1962 amendment designated the first and second paragraphs as subsecs. A and B, respectively; and rewrote subsec. B to read:

"B. Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than five and not more than thirty years, without benefit of parole, probation or suspension of sentence, except as provided in R.S. 15:574.3(G)."

The 1966 amendment rewrote subsec. B to read as it now appears.

The 1983 amendment, in subsec. A, substituted "taking" for "theft" and inserted "belonging to another".

On authority of R.S. 24:253, "that" was substituted for "which" in subsec. A as amended in 1983.

Cross References

Aggravating circumstances in commission of crime, see C.Cr.P. art. 905.4.
"Anything of value" defined, see R.S. 14:2.
"Dangerous weapon" defined, see R.S. 14:2.
Good time allowance on sentence, eligibility, see R.S. 15:571.3.
Indictment, form, see C.Cr.P. art. 465.
Juvenile courts, jurisdiction, see R.S. 13:1570.
Murder in killing in perpetration or attempt, see R.S. 14:30.
Prescription of prosecution, see C.Cr.P. art. 571 et seq.
Responsive verdicts, see C.Cr.P. art. 814.

Law Review Commentaries

Analysis of the Criminal Code. Clarence J. Morrow, 17 Tulane L.Rev. 1, 13 (1942).

Comparison of the Criminal Code with prior criminal law. Dale E. Bennett, 5 La. L.Rev. 6, 38 (1942).

Criminal law—Work of appellate courts for 1976–1977. John S. Baker, Jr., 38 La.L. Rev. 422 (1978).

Developments in the law, 1982–1983: Criminal law. John S. Baker, Jr., 44 La.L. Rev. 279 (1983).

Enactments and amendments on criminal law and procedure passed during 1958 Legislative session. Dale E. Bennett, 19 La.L. Rev. 79 (1958).

Work of the Louisiana appellate courts for 1974–1975 term: Criminal law. Dale E. Bennett, 36 La.L.Rev. 502 (1976).

Library References

Robbery ⇐11.
C.J.S. Robbery §§ 25 to 30.

RECEIVED
MAR 21 1997
OFFICE OF THE CLERK
SUPREME COURT, U.S.

WAIVER

APPEARANCE FORM / WAIVER

SUPREME COURT OF THE UNITED STATES

No. 96-7901

TREST, RICHARD F. (Petitioner) v. CAIN, WARDEN (Respondent)

I do not intend to file a response to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

☒ Please enter my appearance as Counsel of Record for all respondents.

☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain if your name has changed from when you were admitted).

Signature James M. Bullers

Date: March 10, 1997

(Type or print) Name JAMES M. BULLERS

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm BOSSIER PARISH DISTRICT ATTORNEY'S OFFICE

Address P.O. BOX 69

City & State BENTON Zip 71006

Phone (318) 965-2332

A copy of this form must be sent to petitioner's counsel or to petitioner if *pro se*. Please indicate below the name(s) of the recipient(s) of a copy of this form:

CC: REBECCA L. HUDSMITH
102 VERSAILLES BLVD., STE. 816
LAFAYETTE, LA 70501

CLER-0060-9-95

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

February 19, 1997

Ms. Rebecca L. Hudsmith
102 Versailles Boulevard
Suite 816
Lafayette, LA 70501

Re: Richard F. Trest,
v. Burl Cain, Warden
No. 96-7901

Dear Ms. Hudsmith:

The petition for a writ of certiorari in the above entitled case was filed January 27, 1997 and placed on the docket February 18, 1997 as No. 96-7901.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by

Jeffrey D. Atkins
Assistant

Enclosures

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

February 19, 1997

Clerk
United States Court of Appeals for
the Fifth Circuit
600 Camp Street, Room 100
New Orleans, LA 70130

Re: Richard F. Trest,
v. Burl Cain, Warden
No. 96-7901
(Your Docket No. 94-40515)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed January 27, 1997 and placed on the docket February 18, 1997 as No. 96-7901.

Sincerely,

William K. Suter, Clerk

by

Jeffrey D. Atkins
Assistant

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

January 31, 1997

AREA CODE 202
479-3011

Rebecca L. Hudsmith
102 Versailles Boulevard
Suite 816
Lafayette, LA 70501

RE: Richard F. Trest v. John P. Whitley, Warden

Dear Ms. Hudsmith:

The above-entitled petition for writ of certiorari was postmarked January 27, 1997 and received January 31, 1997. The papers are returned for the following reason(s):

The appendix to the petition does not contain the following documents required by Rule 14.1(i):

The report and recommendation of the magistrate must be appended.

The order denying rehearing must be appended. Rule 14.1(i)(iii).

Please correct and resubmit as soon as possible. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
William K. Suter, Clerk
By:

Jeffrey Atkins
(202) 479-3263

Enclosures

cc: James M. Bullers